Villa Sportswear, Inc. *and* Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO. Case 1–CA–29219

August 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on June 3, 1992, against Villa Sportswear, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On June 18, 1992, the Respondent filed an answer admitting to all the allegations of the complaint and to the legal conclusions and their effect on commerce.

On July 23, 1992, the General Counsel filed a Motion for Summary Judgment. On July 24, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In agreement with the General Counsel, we find that the Respondent has admitted all the allegations of the complaint including the legal conclusions and the allegations regarding the effect on commerce of the alleged violations. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Boston, Massachusetts, has been engaged in the assembly, sewing, and finishing of garments for other manufacturers as a contractor in the garment industry. Annually, the Respondent provides services valued in excess of $50,000 for Significance, Inc., an enterprise located in Norwood, Massachusetts. Annually, Significance, Inc. sells and ships from its Norwood, Massachusetts location garments valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory production, maintenance, packing and shipping workers employed by the Respondent at its Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 15, 1991, to June 15, 1994. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

Since on or about September 23, 1991, and continuing to date, the Respondent has failed to pay fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Service Plan, under article XVIII of the 1991–1994 contract. The Respondent engaged in the conduct without the Union's consent. The subjects of this action relate to wages, hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By failing and refusing to honor all the terms and conditions of the contract by failing to pay fringe benefit amounts, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for pension, retirement, and health and welfare, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Villa Sportswear, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor all the terms and conditions of its 1991–1994 contract with Joint Board Cloak, Skirt, and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO by failing to pay fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Service Plan, under article XVIII.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following unit which is appropriate for bargaining within the meaning of Section 9(b):

> All non-supervisory production, maintenance, packing and shipping workers employed by the Respondent at its Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Honor all the terms and conditions of its 1991–1994 contract with the Union by paying fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Service Plan, under article XVIII.

(c) Make the unit employees whole for any losses attributable to its failure to pay fringe benefit amounts.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Joint Board Cloak, Skirt and Dressmakers' Union, a/w International Ladies' Garment Workers' Union, AFL–CIO as the exclusive representative of our employees in the following bargaining unit:

> All non-supervisory production, maintenance, packing and shipping workers employed by us at our Boston, Massachusetts location, but excluding office clerical employees, professional

employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to honor the terms of our contract with the Union by failing to pay fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, under article XVIII of the 1991–1994 contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms of our 1991–1994 contract.

WE WILL make all payments of fringe benefit amounts which have become due to the Health and Welfare Fund of the Union, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, under article XVIII of the 1991–1994 contract.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to abide by article XVIII of the 1991–1994 contract.

VILLA SPORTSWEAR, INC.